

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.567 OF 2000

Shri Shivaji Tulshiram Patil
Aged 44 years, Occ: Service
Residing at 4063/1A Patil Chawl
Barsi 41301, Dist: solapur

...Petitioner

Vs.

1. Shri Vithal Visdhwanath Bobe
Aged Adult, Residing at Narsingh
Colony, Mangalwar Peth, Barsi 413411
District: Solapur.
2. Shri Basaveshwar Mahadeo Gadhave
Aged Adult, Residing at Devane Galli,
Barsi 413 401, Dist: Solapur.
3. Shri D.B. Waichal
Aged Adult, Residing at Hande Galli
Barsi 413411, Dist: Solapur.
4. Shri S.B. Raut
Aged adult, Residing at Raut Vasti
In front of Hotel Aditya, Jamgaon
Road, Barsi 413 401
Dist: Solapur.
5. Shri N.N.Mulla
Aged adult, Residing at Mulla Galli
Near Ekvira Temple, Kasba Barsi
413411, Dist: Solapur.
6. Shri V.P. Charakha
Aged adult, Residing at Javali Plot
Subhash Nagar, Barshi 413401
Dist: Solapur.
7. Shri M.M. Kasbe
Aged adult, Residing at Jaikwadi Plot
Barsi 413411, Dist: Solapur.
8. Shri B.T. Deokar
Aged adult, Residing at Nagoba
Mangwada, Barsi 413401, Dist:
Solapur.
9. Shri C.B. Bulsure
Aged adult, Residing at Shah Dharsi
Jivan Chawl, Solapur Road,
Barsi 413401.
10. Shri S.S.Deshmukh

Aged adult,
Residing at Deshmukh Galli, Kasba
Peth Barsi 413411, Dist: Solapur.

11. Shri G.B. Gokhale
Adult, Residing at Brahman Galli,
Near Bhagwat Temple
Barsi 413411, Dist: Solapur.
12. The Chief Officer, Barsi Municipal
Council, Barsi 413401, Dist: Solapur.
13. Additional Commissioner and Regional
Director, Municipal Administration,
Pune, Division Pune.
14. The State of Maharashtra. ... Respondents

Mr. K.Y. Mandlik for Petitioners
Mr. R.G. Ketkar for Respondent No.1
Mr. Nitin Jamdar for Respondent No.12
Add. G.P. for Respondent Nos.13 and 14
Other Respondents are served.

**CORAM: H.L.GOKHALE &
S.P.KUKDAY, JJ.
RESERVED ON 23RD JUNE, 2005
PRONOUNCED ON 29TH JUNE, 2005**

ORAL JUDGMENT (PER S.P. KUKDAY, J.)

1. The Petitioner has impugned order dated 6th November, 1999 passed by the Additional Commissioner and Regional Director of Municipal Administration, Pune Division, Pune (Respondent No.13) allowing Revision Application Nos.7 of 1997 and 8 of 1997, setting aside decision of the Committee of Municipal Council of Barshi in respect of promotions to the post of Senior Clerk and directing an action to be taken in accordance with the Rules and established norms.

2. Briefly stated the relevant facts are that the Petitioner and Respondents 1 to 11 are employees of

Barshi Municipal Council, Barshi, District Solapur (hereinafter to be referred as the Municipal Council). In this Municipal Council previously qualification for recruitment to the post of Junior Clerk was S.S.C. The Municipal Council recognises two departmental examinations namely Local Self Government Diploma (L.G.S.D. for short) and Local Government Service Diploma (L.G.S.D. for short). For appearing at the L.G.S.D. Examination requisite qualification is Graduate with two years of Supervisory experience or L.S.G.D.

3. By the Government resolution dated 30th October, 1990 and 30th November, 1991 three posts in the cadre of Senior Clerks were newly created prescribing graduation as the qualification for these three posts. In the year 1989 the Municipal Council considered its employees for promotion. Respondent No.3 and one Shri C.A. Satarkar were promoted to the post of Senior Clerk by order dated 6th December, 1989 and Respondent Nos.4 and 5 were promoted to this post by order dated 28th December, 1990. In this process Respondent Nos.1 and 2 were super-ceded. Therefore, Respondent No.1 filed a Revision bearing Revision Application No.1 of 1992 before Additional Commissioner and Director of Municipal Administration. Pune, the Respondent No.13 herein under Section 318 of Maharashtra Municipalities Act, 1965 (herein after to be referred to as the **Municipalities Act**). Respondent

No.13 set aside promotions of Respondent Nos.3,4 and 5 and others, by his order dated 23rd March, 1993 and directed the Municipal Council to reconsider the decision regarding promotion, having regard to the seniority, service record and other factors. It was also observed that reasons should be given for superceding senior employees.

4. Being aggrieved by the order of Respondent No.13, Respondent No.3 filed Writ Petition No.1933 of 1993 challenging this order dated 23rd March, 1993. Two other Petitions being Writ Petition No.7677 of 1996 by Respondent No.10 and Writ Petition No.1088 of 1996 by Respondent No.1 came to be filed. These petitions were disposed of by a common order on 1st July, 1996 with a direction that a Committee be set up for the promotion and the process be completed within four months from the date of the order. A Committee was accordingly constituted under the Chairmanship of Chief Officer of the Municipal Council. The Committee adopted criteria of passing LSGD evolved by resolution No.1047 dated 5th October, 1981 adding a condition of holding a degree for being eligible for the promotion. This was in contravention of the Rule which required that the promotions were to be given only on the basis of seniority-cum-merit. The Committee then proceeded to consider service record of the eligible candidates and prepared a report. This report was submitted to the Standing Committee of the Municipal Council on

25th March, 1997. The Standing Committee accepted this report and approved promotion of Respondent Nos.3 to 11, the Petitioner, Shri C.A. Satarkar and one Shri S.B. Kamble. Promoted employees were posted to posts having different nomenclature such as Assistant Head Clerk, Chief Store Keeper, Asstt. Accountant etc.

5. Respondent Nos.1 and 2 had been given promotional benefits as Senior Clerk by earlier order dated 1st October, 1994 on the basis of having completed 12 years service. However, at the time of preparation of the report, criteria of educational qualification was fixed as a Degree or L.S.G.D. as stated above. Therefore, both these Respondents were not considered for promotion. Being aggrieved by this decision of the Committee, Respondent No.1 filed Revision application bearing No.8 of 1997 challenging the promotions of Respondent Nos.3 to 11. Respondent No.2 filed Revision Application No.7 of 1997 challenging promotions of Respondent Nos.4,5,8,9, 11 and the Petitioner. Respondent No.13 found merit in the Revision as there was no justification for adopting criteria of graduation or L.S.G.D.. It was further found that the criteria evolved was not uniformly applied as some of the persons who had passed only S.S.C. examination were also promoted on the ground that they belong to reserved categories. There were other anomalies in the report. Considering

all these infirmities Respondent No. 13 allowed both the Revisions and directed an action to be taken in the light of the directions given by him. This common order dated 6th November, 1999 of Respondent No.13 allowing both the Revisions is impugned in the present Petition.

6. Learned Counsel for the Petitioner Mr. Mandlik has argued the matter at length. According to learned Counsel the report has been accepted by the Standing Committee. Not only that, benefit of 12 years service having been given to Respondents 1 and 2, they are now drawing salary as Senior Clerks and are not put to any loss. As the Respondents Nos. 1 and 2 are nearing retirement, learned Counsel submits that in these circumstances it will not be prudent to interfere with the decision taken by the Standing Committee, more so because once the matter had already been remanded earlier It is pointed out that the process of promotion lasted for a period of four years from the year 1993 up to the year 1997, therefore a remand at this stage would result in hardship to the employees. Learned Counsel has also assailed the order passed by Respondent No.13 and submitted that the Additional Commissioner and Director of Municipal Administration does not have jurisdiction to entertain revision against the order of the Standing Committee, as section 318 of the Municipalities Act is not applicable to this case. According to the learned

Counsel, Respondents 1 and 2 ought to have first moved the Collector in Appeal under Section 308 of the Municipalities Act. Reliance is placed on the ruling of this High Court reported in **1978 Maharashtra Law Journal, page 718 in the matter of Panditrao Daji Kulkarni vs. State of Maharashtra and others.** According to learned Counsel Standing Committee cannot be equated to the Council, and therefore, Respondent No.13 had no jurisdiction to entertain a Revision. Hence, the impugned order being without jurisdiction will have to be set aside.

7. Respondent No.12 is the Chief Officer of the Municipal Council. Shri Jamdar, learned Counsel appeared for him and supported the Petitioner. Learned Counsel reiterated that Respondent No.13 had no jurisdiction to entertain the revision under Section 318 of the Maharashtra Municipalities Act, According to learned Counsel also Respondents 1 and 2 ought to have approached the Collector under Section 308 of the Maharashtra Municipalities Act and not to Respondent No.13 under Section 318 of the said Act. Learned Counsel has pointed out that the Committee has taken all the relevant aspects into consideration at the time of preparation of the report. Promotions are given on the basis of criteria of seniority-cum-merit and thus it is not necessary to reconsider the report. According to learned Counsel the Stay granted on implementation of the report is holding up the

promotions and is detrimental to the interest of the employees. Learned Counsel has taken us through the contents of the written arguments submitted by the parties before Respondent No.13. According to learned Counsel if the legal provisions and facts of the present case are considered in proper perspective the Petition deserves to be allowed.

8. Shri Ketkar, learned Counsel for the contesting respondent No.1 has referred to the text of resolution No.1047 dated 5th October, 1981. It is pointed out that the resolution itself shows that no educational qualification were provided by the Rules. Therefore, it was not open to the Municipal Council to put a condition of passing LSGD as a precondition for promotion for the first time in 1981 by resolution No.1047. Learned Counsel has pointed out that though the Committee professes to have taken all the aspects into consideration, the criteria has not been uniformly applied to all the employees. Though Respondents 1 and 2 are seniors, they are by-passed, whereas Respondent Nos. 6,7,8 and 10 though matriculates are promoted. Learned Counsel has pointed out anomalies found in the report of the Committee and has emphasised that the proceeding was not properly conducted by the Committee. Learned Counsel propounds that there is a distinction between Section 308 and 318. Under Section 308 the Collector can act only if he is of the opinion that the

execution of any order or resolution of a Council, or doing of anything which is about to be done or is being done is likely to cause injury or annoyance to the public or is against public interest or leads to a breach of peace or is unlawful. Unlike Section 318, Section 308 does not refer to officers subordinate to the Council. According to learned Counsel Section 318 is a revisional power of the State Government which is delegated to Regional Director of Municipal Administration. Therefore, Respondent No.13 had jurisdiction to entertain the revision and to adjudicate upon the issues involved. Thus, contention of Petitioner and Respondent No.12 that Respondent No.13 had no jurisdiction to entertain revision under Section 318 cannot be sustained. Learned Counsel further submits that Respondent No.13 has taken into consideration all the issues of law and fact therefore no fault can be found with the order passed by Respondent No.13.

9. We have considered the rival submissions. There is no dispute between the parties in respect of the factual aspect. Learned Counsel for Petitioner and Respondent No.12 question sustainability of the order passed by Respondent No.13 on the ground that Respondent No.13 had no jurisdiction to entertain the revision challenging propriety of resolution No.206 dated 25th March, 1997 passed by the Standing Committee. It is further submitted that proper Course

open to Respondents 1 and 2 was to approach the Collector under Section 308 of Municipalities Act. For properly understanding the contention it would be pertinent to juxtapose relevant portion of these two Sections. These Sections are :-

. **Section 308(1):** "If in the opinion of the Collector, the execution of any order or resolution of a Council, or the doing of anything which is about to be done or is being done by or on behalf of a Council, is causing or is likely to cause injury or annoyance to the public or is against public interest or to lead to a breach of the peace or is unlawful, he may by order in writing under his signature suspend the execution or prohibit the doing thereof".

. **Section 318 :**" The State Government may, at any time, for the purpose of satisfying itself as to the legality or propriety of any order passed by, or as to the regularity of the proceedings of, any Council or of any officer subordinate to such Council or the State Government, acting in exercise of any power conferred on it or him by or under this Act, call for and examine the record of any case pending before or disposed of by such Council or or officer and may pass such order

in reference thereto as it thinks fit:

. Provided that, no order shall be varied or reversed unless notice has been given to the parties interested to appear and be heard:

. Provided further that, no such order shall be passed in any case in which an appeal is provided and has been preferred or has been decided:

. Provided also that, no such record shall be called by the State Government after one year from the date of the passing of the order by the Council or the officer concerned."

10. Contention of learned Counsel for the Petitioner and Respondent No.12 that the aggrieved persons should have first approached the Collector under Section 308 of the Municipalities Act cannot be sustained for a simple reason that the powers under Section 308 conferred on the Collector can be exercised only in case of an emergency. The Collector can exercise these powers in respect of execution of any order or a resolution of a Council etc. if it is causing or is likely to cause injury or annoyance to the public or is against public interest

or leads to breach of peace or is unlawful. In this case the resolution in respect of promotion of Municipal employees does not fall under any of these categories therefore, the Collector has no jurisdiction to act under Section 308 of the Municipalities Act. Learned Counsel for Respondent No.1 Shri Ketkar has rightly pointed out that Section 308 operates in a limited field whereas Section 318 has a wider field of operation. Learned Counsel has rightly pointed out that Section 308 does not make reference to the orders passed by any Officer Subordinate to the Council or the State Government. Be that as it may; the fact remains that a resolution passed by the Standing Committee in respect of the promotion of employees can not be said to be causing any injury or being against the public interest etc. Therefore, contention of the Petitioner that Respondents 1 and 2 should have approached Collector under Section 308 of the Act cannot be sustained.

11. Second contention of the Petitioner is that Respondent No.13 had no jurisdiction to entertain revision challenging resolution No.206 of the Standing Committee under Section 318 of the Municipalities Act. Learned Counsel has made reference to Section 7 which enumerates authorities of Municipal Council charged with carrying out provisions of this Act. The authorities are (a) The Council; (b) The President; (c) The Standing Committee; (d) The Subjects

Committees if any; and (e) The Chief Officer. According to learned Counsel, having regard to Section 7 it can be seen that the Standing Committee cannot be equated to the Municipal Council. Section 318 does not make a reference to the Standing Committee therefore, revision against resolution passed by the Standing Committee cannot be entertained by having recourse to the provisions of Section 318 of the Municipalities Act. For this proposition reliance is placed on the Ruling of the Division Bench of this Court in the case of Panditrao Kulkarni (Supra). In that case the President of the Municipal Council of Ichalkaranji had called for a special meeting for the purpose of electing members of the subjects Committees. The election could not take place for want of coram. In these circumstances the President exercised his power of nomination under 63(3B)(i) of the Municipalities Act. In this behalf Learned Counsel for Petitioner has made a reference to the observations of the Division Bench in paragraph 104 and 105 of the report. However, para 88 of the report shows that in the circumstances of that case on account of the failure of the Council to elect members of the subjects committee, the President had exercised powers of nomination under Section 63(3B)(i) of the Municipalities Act. The Division Bench observed in para 88 of the report as follows:-

. "In our opinion, since the condition

of President exercising powers under Section (3B)(i) of Section 63 arises only after the Council has failed to fill up by election any vacancy of a member or members of the subjects committees, in other words, since the President steps in only on the failure of the Council to fill up the vacancies, it is impossible to accept the proposition, that in the content of sub-section (3B)(i) of Section 63, the President could be deemed to be or equated with the Council and much less any action on his part in that context could be an action for or on behalf of the Council."

12. Having regard to this observation it can be seen that this ruling does not support contention of the learned Counsel for the Petitioner that the standing committee cannot be equated with the Council because it is specified as an independent authority under Section 7 of the Municipalities Act. In fact all the authorities specified under Section 7 are entrusted with the implementation of the provisions of the Municipalities Act and therefore, represent the Council except in certain circumstances. It is also pertinent to bear in mind that though the resolution is passed by the standing committee it cannot be implemented unless it is ratified by the Council. Therefore, it is not possible to accept the contention of the learned Counsel for the Petitioner that

standing committee is not a Council, and therefore, Section 318 is not attracted.

13. Another objection raised to the applicability of Section 318 by learned Counsel for the Petitioner is that the matter does not pertain to any case. This contention is also founded on the observation of the Division Bench in the above ruling. However, careful reading of Section 318 would show that reference to '**a case**' in the proviso to that Section must be taken as reference to the proceedings before any authority subordinate to the Council or the State Government. Learned Counsel has also made reference to the second proviso which puts limitations on the powers of revision. This proviso makes it clear that the Government cannot exercise powers of revision in any case in which an appeal is provided or has been preferred or has been decided. This provision is made to ensure that conflicting orders are not passed in respect of the same subject matter. In the present case it is not in dispute that no appeal is provided against the order of the standing committee. Therefore, it is not possible to accept the contention of the learned Counsel that because standing committee cannot be equated to the Municipal Council or that there was no case in respect of which revision could be filed, Section 318 is not applicable. Wording of this Section is wide enough to cover all orders passed by the Council or its officer or by the officer of the

State Government. The section makes no distinction between orders which are final or which are subject to appeal. If the order is appealable second proviso makes it clear that the revision is maintainable subject to that proviso. The powers conferred by this Section on the State Government to interfere in the Municipal affairs is extensive and can be exercised even in case of orders which are declared as final by this act, however, this cannot be a reason for narrowing scope of the section. The section is wide enough to cover resolution passed by the standing committee which is one of the organs of the Council and represents the Council. In this view of the matter contention of the learned Counsel for the Petitioner that order of Respondent No.13 is without jurisdiction, cannot be sustained.

14. So far as merits are concerned it is contended by the learned Counsel for the Petitioner that Committee appointed under the Chairmanship of the Chief Officer has considered all the relevant factors at the time of selecting employees for promotion therefore, no fault can be found with the report and submitted by the Committee, and the order of Respondent No.13 remanding the matter for reconsideration cannot be sustained. Learned Counsel for Respondent No.12 has supported the Petitioner. According to learned Counsel monetary benefits equivalent to promotions are given to Respondent Nos.1

and 2, and therefore, they are not put to any loss. Learned Counsel for Respondent No.12 submits that considerable time has been spent; the matter was already remanded once, the employees are already working on the promotional posts, therefore, it would not be proper to reopen the proceeding. There is some substance in this contention. The matter was indeed remanded for reconsideration by the order of this Court. There after the Committee has prepared the report. However, it is pertinent to bear in mind that the criteria evolved by the Committee on the basis of resolution No.1047 dated 5th October, 1981 cannot be justified in the absence of any Rule. Learned Counsel for Respondent No.1 has rightly pointed out that the resolution itself mentions that no educational qualification is prescribed for the post of Senior Clerk. At the initial stages persons passing S.S.C. examination were recruited to the post of Junior Clerk and were promoted to the post of Senior Clerk on the principle of seniority-cum-merit. Therefore, in absence of any rule, resolution No.1047 dated 5th October, 1981 could not have been passed as this results in altering service conditions to the detriment of a class of the employees. The Committee was also not justified in prescribing another criteria of Graduation in addition to passing of L.S.G.D. as a condition precedent for promotion. As the Committee has adopted this criteria Respondents 1 and 2 who are not Graduates were not even considered for promotion.

It is pertinent to note that all the employees who are within the zone of consideration for promotion have a right to be considered for promotion. The criteria for promotion adopted by the Committee has thus resulted in violation of this right of respondents Nos.1 and 2. For this purpose reference can be made to the Ruling of the Apex Court reported in **A.I.R., 2000 Supreme Court, page 2639 in the matter of Sarabjit Singh Vs. Ex. Major B.D. Gupta and others in para eight of the Judgment** it is observed by the Apex Court that :-

. "8. In our view, the respondent-writ petitioner is no doubt right in contending that he has a fundamental right to be considered for promotion but this is available only if the 1st respondent falls within the prescribed zone of consideration."

15. In the present case there is no rule prescribing Graduation or passing of L.S.G.D. as qualification for the post of Senior Clerk. Thus, it was not open to the Committee to evolve such a criteria. The Committee could have taken into consideration this criteria at the time of selection of candidates for promotion along with service record. However, it was not open to the Committee to debar class of Matriculate employees from being considered for promotion. This action of the Committee has

resulted in violation of the right of Respondent Nos.1 and 2 available to them under Article 14 and 16 of the Constitution to be considered for promotion because they were within the zone of consideration and were wrongly excluded.

16. Learned Counsel for Respondent No.12 Shri Jamdar has contended that promotional benefits are given to Respondent Nos.1 and 2. Therefore, they have not sustained any loss. Both of them are nearing retirement therefore, the matter of promotion should not be reopened. This contention cannot be sustained because it is founded on erroneous assumption. The promotional benefits to which reference is made is the stagnation increment given to an employee after completion of 12 years service if he has no prospects of promotion. This policy is adopted in order to avoid frustration resulting from absence of promotional avenues, and to ensure that the efficiency of an employee is not affected. This benefit can be given only to the employees who are eligible for promotion but could be promoted for want of promotional post and who are not penalised in a departmental enquiry. In the present case once it is held that Respondents 1 and 2 are not eligible for promotion, stagnation increment will have to be withdrawn as they are superseded by their juniors. In these circumstances Respondents 1 and 2 would technically be denied stagnation increment. If this

fact is taken into consideration, contentions of learned Counsel for Respondent No.12 Shri Jamdar that Respondents 1 and 2 are not put to any loss and therefore, the matter of promotion should not be reopened cannot be sustained. It must also be borne in mind that Respondents 1 and 2 challenged the first order of promotion dated 6th December, 1989 by which Respondent Nos.3,4,5 and Shri C.A. Satarkar were promoted by filing Revision No.1 of 1992 before Respondent No.13. After the revision was allowed and the matter was remanded, both Respondent Nos.1 and 2 were given promotional benefits by order dated 1st October, 1994. It is therefore, apparent that both the Respondents were eligible for promotion. This fact shows that injustice has been done to Respondent Nos.1 and 2 who are seeking redressal of their grievance since the year 1992. Thus, the contention that the matter of promotion should not be reopened because of the passage of time, cannot be sustained.

17. Learned Counsel for Petitioner Shri Mandlik has contended that the order dated 6th January, 1999 of Respondent No.13 cannot be sustained since the Committee has already considered all the relevant factors at the time of preparation of report. This contention also cannot be sustained for the reasons that apart from the fact that the Committee has erroneously adopted the criteria of Graduation and L.S.G.D. as eligibility criteria, other infirmities

in the report are also pointed out by Respondent NO.13. Promotions are given without following proper procedure as per the 50 point Roster, candidates from the open category are promoted though the candidates from reserved categories were available and this was done without following the procedure for dereservation of the posts. It is also found by Respondent No.13 that the criteria of Graduation or L.S.G.D. with 10 years service is not uniformly applied. Promotions are given to some of the Respondents holding the qualification of S.S.C. only on the ground that they belong to reserved category. If all these facts are considered no fault can be found with the order passed by Respondent No.13 giving direction for removing these anomalies and submitting report of compliance within three months from the date of order. The Petition is therefore, dismissed. However, in the circumstances there shall be no order as to costs.

(H.L.GOKHALE, J.)

(S.P.KUKDAY, J.)